Bail Slip

The Appellants/Accused 1 to 3 viz., 1.S.P.Jaswanth Kumar, 2. Santhakumar and 3. Bhojan were directed to be released on bail in and by the order of this Court date 24.9.99 and made in Crl.MP.No.8264 of 1999 in Crl.A.No.770 of 199.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.06.2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

CRL.APPEAL No.770 of 1999

1.S.P.Jaswanth Kumar
2.Santhakumar
3.Bhojan ... Appellants

Versus

State rep.
by Inspector of Police,
Civil Supplies C.I.D.,
Coimbatore.
(Crime No.34/99). ... Respondent

Criminal Appeal filed under Section 12 AB of Essential Commodities Act read with Section 372 of Criminal Procedure Code against the conviction and sentence passed on the petitioner by the Presiding Officer for Special Court for E.C./NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris at Coimbatore on 7.9.1999 for offences under Section 7 (1)(a)(ii) of the Essential Commodities Act, 1955 for the violation of Clause 3,4 and 5 of the Tamil Nadu Scheduled Articles (Prescription of Standard) Order 1977 to undergo six months of simple imprisonment on 3 counts and to pay a fine of Rs.10,000/-, Rs.10,000/- and Rs.5,000/- respectively on 3 counts in default to undergo 45 days of simple imprisonment in so far as as the Ist Accused/Ist Appellant is concerned and in so far as the 2 and 3 accused/2nd and 3rd Appellant are concerned to undergo 3 months simple imprisonment on 3 counts and each to pay a fine of Rs.2000/-,2000/- and 1000/- respectively on 3 counts in default each to undergo 3 weeks of simple imprisonment under Section 264 Cr.P.C.

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For Appellants : Mr.N.Ishtiag Ahmed
For Respondent: Mr.N.Kumanan,
Govt.Advocate(Crl.Side).

JUDGEMENT

The appellants are accused 1 to 3 in S.T.C.No.4 of 1999 on the file of the Special Court for E.C./NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris. The first appellant is Proprietor,the second appellant is a Tea maker and the third appellant is an Accountant of Messers Sayar Industries.

2.The case of the prosecution is that on 18.2.1999 P.W.4 along with P.Ws.1 and 2 inspected the Sayar Industries and found several bags of tea, from which samples were taken and marked as AS1, AS2 and AS3,BS1, BS2 and BS3 and CS1,CS2 and CS3. The seized materials were adulterated tea and the samples were marked under Ex.P15, P17 and P18. Hence the accused were prosecuted for the offence under Clause 3,4 and 5 of Tamil nadu Scheduled Articles (Prescription of Standards) Order, 1977 punishable under Section 7(1)(a)(ii) of Essential Commodities Act 1955.

3.On behalf of the prosecution P.W.1 to P.W.4 were examined and Exhibits P.1 to P21 were marked. On the side of the accused no witness was examined and no document was marked. On conclusion of trial, the learned Special Judge came to the conclusion that the offences alleged against the accused are proved and he convicted the accused to undergo six months of simple imprisonment on 3 counts and to pay a fine of Rs.10,000/-, Rs.10,000/- and Rs.5,000/- respectively on 3 counts in default to undergo 45 days of simple imprisonment in so far as as the Ist Accused/Ist Appellant is concerned and in so far as the 2 and 3 accused/2nd and 3rd Appellants are concerned to undergo 3 months simple imprisonment on 3 counts and each to pay a fine of Rs.2000/-,2000/- and 1000/- respectively on 3 counts in default each to undergo 3 weeks of simple imprisonment under Section 264 Cr.P.C. Hence the appeal.

4.The learned counsel for the appellants would contend that since Tea is not foodstuff, it cannot be included under Clause 3,4 and 5 of Tamilnadu Scheduled Article (Prescription of Standards) Order, 1977 punishable under Section 7(1)(a)(ii) of Essential Commodities Act 1955. In support of his contention, the learned counsel for the appellants submitted a judgement reported in 2003 AIR SCW 5935 (S.Samuel, M.D.Harrisons Malayalam and another vs. Union of India and others) in which the Honourable Supreme Court Judges held as follows:

> "12.We would first examine whether tea is a 'foodstuff'. The term food stuff (including edible oilseeds and oils) is not defined by the EC Act. Resort shall have to be had to the meaning of the term 'foodstuff' in common parlance, in the commercial world and amongst the consumers--where tea is sold,

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purchased and consumed. 'Foodstuffs' and 'tea' are commonly sold and bought in the market and are consumer items. We will have to see whether 'tea' is considered a 'foodstuff' in the market frequented by its dealers and consumers.

13.Let us first have the opinion of lexicographers. "When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context, as it is a fundamental rule that 'the meaning of words and expressions used in an Act must take their colour from the context in which they appear". (Principles of Statutory Interpretation by Justice G.P.Singh Eighth Edition, 2001, page 279), 'Foodstuff' according to the Chambers Dictionary means a substance used as food. According to words and phrases, Permanent Edition (Vol.17, page 313) 'foodstuffs' means food which has been subjected to "canning" or 'similar' "preparation". The New Oxford Encyclopedic Dictionary defines 'foodstuff' as material for food and 'foodstuffs' as articles of food in bulk. So, we should proceed to ascertain what 'food' is.

14.As per Words and Phrases (Permanent Edition. Vol.17, at page 306) 'food', in the general sense of the term, is that which is eaten or drunk for nourishment. It is a nutritive material taken into the body for the purpose of growth; repair or maintenance; that which is eaten of drunk for nourishment; whatever supplies nourishment to organic bodies. It is a general term applicable to all that is eaten for the nourishment of the body and includes which is eaten or drunk for nourishment, any substance that is taken in the body which serves, through organic action, to build-up normal structure or supply the waste of tissue, and includes confectionery. At page 310, a distinction is drawn between 'food' and 'drink'. It is stated – "Food" is a nutritive material absorbed or taken into the body an organism for purposes of growth or repair and for the maintenance of the vital processes, and while the words "food" and "drink" are, in common usage and understanding, complementary and associate terms, they are far from synonymous and import a plain and fundamental distinction. Purchaser of beverage in which there was worm, could not base action on statutory implied contract that "food" is wholesome, since "food" does not include beverage."

15. It is thus clear that in common parlance 'food' is something that is eaten. In a wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that whether a solid of a liquid, the substance called 'food' should possess the quality to maintain life and its growth. It must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body.

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22.As an upshot of the above discussion, also keeping in view the judicial exposition of the terms 'foodstuffs' and 'tea'. We are definitely of the opinion that tea is not foodstuff. Even in a wider sense as dealt with in Virkumar Gulabchand Shah's case(supra) "foodstuffs" will not include tea as tea either in the form of the leaves or in the form of beverage does not go into the preparation of food proper to make it more palatable and digestible. Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in boiled water. Such 'tea' is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. 'Tea' neither nourishes the body nor sustains or promotes its growth. It does not have a nutritional value. It does not help formation of enzymes nor does it enable anabolism. Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, any one who has taken tea would not say that he has taken or eaten food. Thus, 'tea' is not 'food'. It is not understood as 'food' or 'foodstuff' either in common parlance or by the opinion of lexicographers.

25. The Notification dated June 20,1972, notifying the delegation of powers by the Central Government to State Government is confined to foodstuffs, meaning thereby that the said Notification delegated the powers by the Central Government to the State Government in regard to certain clauses of Sub-section (2) of Section 3 of the E.C. Act but only in relation to 'foodstuffs'. In the Notification dated June 20,1971 and June 9,1978 the specified matters in relation to which delegation has been made are referable to 'foodstuffs'. As 'tea' is not a 'foodstuff', the power, vesting in the Central Government in relation to 'tea', cannot be said to have been delegated to any State Government. By Notification dated February 10,1978, the Central Government has declared the commodity 'tea' to be an essential commodity. With effect from the date of the said Notification, tea becomes an essential commodity by reference to the power exercised by the Central Government under Section 2(xi) of the E.C.Act read with Entry 33 in List III in the Seventh Schedule to the Constitution and Section 2 of the Tea Act 1953. But then there is no delegation of powers by the Central Government under Section 5 of the E.C.ACT in relation to Tea. The notification dated June 9,1978, is also confined to foodstuffs which would not include tea,as already stated. Thus, it cannot be held that the State of Tamil Nadu had any power conferred upon it by the Central Government to issue any order applicable to tea under Section 3 of the E.C. Act.

27.As we have held that the State of Tamil nadu could not have promulgated an order under Section 3 of the E.C. Act in the purported exercise of the power delegated by the Central

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Government to make an order applicable to tea by wrongly assuming tea to be a foodstuff, the several provisions of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977 must be held to be ultra vires the power of the State Government to the extent to which it makes provisions in relation to tea. The said order cannot apply to tea."

5. Since 'foodstuff' does not include 'tea' under the provisions of the Tamil Nadu Scheduled Articles (Prescription of Standards) Order, 1977 as held by the Supreme Court of India, the prosecution case as against the appellants is not sustainable. Hence the conviction and sentence are set aside and the appellants are acquitted. The fine amount paid by the appellants is ordered to be refunded. The bail bond shall stand cancelled.

vk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Special Judge, Special Court for E.C./NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris at Coimbatore.

2.The Superintendent, Central Prison, Coimbatore.

3.The Inspector of Police,
Civil Suplies C.I.D., Coimbatore.

4.The Public Prosecutor,High Court,
Madras.

1 cc To Mr.N.Ishtiaq Ahmed, Advocate, SR.24389.

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MAB(CO)
RVL 22.06.2006

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